

Jim-Sandy Chevrolet, Inc. and United Food and Commercial Workers, District Local One, Petitioner. Case 3-RC-8409

7 June 1984

**DECISION AND CERTIFICATION OF
RESULTS OF ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 26 May 1983 and the Hearing Officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 5 for and 7 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings¹ and recommendations only to the extent consistent herewith.

The facts are as follows. Three days before the election, the Employer's sales manager, Crowley, held a sales meeting which was attended by unit employees. The hearing officer found that unlike the regular weekly sales meetings which lasted about 30 minutes and dealt with the dealership's business, this meeting lasted about 70-90 minutes and dealt with employee working conditions. After Crowley had distributed an antiunion campaign letter, he asked employees to lay their cards on the table and tell him what their problems were. The hearing officer further found that when an employee asked Crowley about a pay plan in writing, Crowley said he could not put one in writing because of other factors, and when asked about a lot boy problem, he made no comments regarding any improvement in that situation. Accordingly, the hearing officer concluded that Crowley made no express or implied promises about either the pay plan or the lot boys.²

Crowley also responded to a question about a health plan. The hearing officer discredited Crowley's testimony about his response but credited the testimony of three employees. The three credited statements about Crowley's responses were that he had said that he and Vice President Sandy Byers

were looking into the "Blue Million Plan"; that "we can't say exactly what we're trying to do because of the union proceedings but we are working on a plan"; and that "nothing could be done now, because of the union involvement." In quoting the latter statement, the hearing officer left out the remainder of the sentence following the word "involvement." The entire sentence is "He said that nothing could be done now, because of the, which I can understand, union involvement and what not before, nothing could be promised."

The hearing officer concluded that the Employer interfered with the employees' choice in the election by impliedly promising to provide employees with improved health insurance benefits and recommended that the election be set aside. In so concluding, the hearing officer found that despite any assertions Crowley might have made about not promising employees anything, such comments would be construed by employees as doubletalk in light of his other statements and lead them to believe that promises in fact were being made. The Employer has excepted to the hearing officer's conclusion that it interfered with employee free choice by promising improved health insurance benefits. For the reasons stated below, we find merit in the Employer's exceptions.

In her discussion of the sales meeting before the election, the hearing officer found that while the pay plan was a "constant bitch" the Employer never sought such complaints from employees before, but this finding is not supported by the record. Only Crowley and a unit employee testified about the prior meetings. Crowley testified that employee grievances were discussed at every meeting and the employee testified that "[W]e would just go over problems in the dealership . . ." and that "[W]hoever has anything to say says it. . . ." Thus, the Employer apparently sought or at least listened to employee complaints at its regular Monday sales meetings.

At the preelection sales meeting, the Employer heard three complaints: about a written pay plan, about lot boys, and about a health plan. The Employer's responses to all three were similar. Crowley said he could not put the pay plan in writing because there were other contributing factors, made no comment regarding any improvement in the lot boy situation, and stated that he was looking into a health plan, then further stated that nothing could be promised. Discussion of the three items was in response to questions and the discussion of each consisted of acknowledgement of the problem coupled with some indication that nothing could be done.

¹ The Employer has excepted to certain credibility resolutions of the hearing officer. It is the Board's established policy not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Conner Trading Co.*, 188 NLRB 841 fn. 4 (1971), *Coca-Cola Bottling Co.*, 132 NLRB 481, 483 (1961). We find no sufficient basis for disturbing the credibility resolutions in this case.

² No exceptions have been taken to the hearing officer's recommendation that the portion of the Employer's Objection 2 which relates to the pay plan and to the lot boy problems be overruled.

From all of the circumstances discussed above, we conclude that the Employer made no expressed or implied promises to improve health insurance benefits. Thus, the hearing officer did not discredit Crowley's testimony that he stated he did not promise anything in response to a question about a health insurance benefit plan. Further, as noted above, the omitted portion of one employee's credited testimony quoted Crowley as saying that nothing could be promised. Further, the Employer's practice of listening to complaints at Monday sales meetings rebuts any inference that the Employer intended to grant grievances heard at the preelection meeting. Additionally, the hearing officer found that Crowley made no expressed or implied promise concerning the pay plan or lot boys. Therefore, contrary to the hearing officer, we conclude that Crowley's comments would not reasonably be construed by employees as doubletalk and thus would not lead them to conclude that a promise of improved health insurance benefits was in fact being made.³ Accordingly we conclude that

³ The hearing officer found that Crowley told employees he and Byers were looking into Blue Million Plan, but could not tell employees what they were going to do "because of the Union." The hearing officer therefore concluded that the Blue Million Plan was dependent on the Union, leading employees reasonably to believe that, if there were no Union, such a benefit would be forthcoming. It is clear, however, that the employee on whose testimony the hearing officer relied did not testify that Crowley said "because of the Union" but rather testified Crowley said "because of the union proceedings." We find that Crowley's reference to

the Petitioner's exception should be overruled and the results of the election certified.

CERTIFICATION OF RESULTS OF ELECTION

It is certified that a majority of the valid ballots have not been cast for United Food and Commercial Workers, District Local One and that it is not the exclusive representative of these bargaining unit employees.

MEMBER DENNIS, dissenting.

The Employer solicited grievances 3 days before the election when he called a meeting of employees and asked them to lay their cards on the table and say what their problems were. In my view, the evidence is insufficient to establish that this meeting was merely a continuation of a previous employer practice of soliciting grievances. Accordingly, the hearing officer correctly reasoned that, under *Uarco Incorporated*, 216 NLRB 1 (1974), the Employer must rebut the inference of promise that arose from the solicitation. I am unable to conclude on the record as a whole that the Employer successfully rebutted the inference with respect to the solicitation of the health plan grievance.

union proceedings, when considered as a whole and in context, does not lead to the conclusion that if there were no Union the benefit would be forthcoming, but was essentially a reference to the pending election.